

IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,               ) Criminal Case No. 18-00010  
  )  
  )  
   Plaintiff, )  
  )  
  )  
   vs. )  
  )  
  )  
JOHN D. WALKER,                         )  
aka JON WALKER,                         )  
MARVIN R. REED,                         )  
KENNETH R. CROWE,                      )  
PHILLIP T. KAPP,                        )  
  )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL J. BORDALLO,  
MAGISTRATE JUDGE  
(Via telephone)  
MAY 6, 2020; 9:00 A.M.  
HAGATNA, GUAM

**Motion Hearing on an Amended Motion for Hearing to Address  
Potential Conflict of Interest and a Motion for Protective  
Order, Prevent Removal of Evidence, Schedule Inspection,  
Prevent Harassment of Witnesses**

09:01:50AM  
09:01:54AM  
09:01:58AM  
09:02:01AM

Proceedings recorded by *mechanical stenography*.

Veronica F. Flores, CSR-RPR  
Official Court Reporter  
520 W. Soledad Avenue  
Hagatna, Guam 96910

APPEARANCES

Appearing on behalf of plaintiff:

**OFFICE OF THE UNITED STATES ATTORNEY**  
**BY: STEPHEN LEON GUERRERO, AUSA** (via telephone)  
**MARIE MILLER, SAUSA** (via telephone)  
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Appearing on behalf of Defendant Walker:

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**BY: JAMES M. MAHER, ESQ.** (via telephone)  
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**BY: MACK K. MARTIN, ESQ.** (via telephone)  
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Oklahoma City, OK 73102

Appearing on behalf of Defendant Reed:

**LAW OFFICE OF PETER C. PEREZ**  
**BY: PETER C. PEREZ, ESQ.** (via telephone)  
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Appearing on behalf of Defendant Crowe:

**LAW OFFICE OF LUJAN & WOLFF**  
**BY: DAVID J. LUJAN, ESQ.** (via telephone)  
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**LAW OFFICE OF GREGORY NICOLAYSEN**  
**BY: GREGORY NICOLAYSEN, ESQ.** (via telephone)  
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Appearing on behalf of Defendant Kapp:

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**BY: EDWARD A. MCCONWELL, ESQ.,** (via telephone)  
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Appearing on behalf of Defendant Hansen:

**LAW OFFICE OF EDWARD C. HAN**  
**BY: EDWARD C. HAN, ESQ.** (via telephone)  
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Appearing on behalf of Defendant Rogers:

**LAW OFFICE OF GUMATAOTAO & POLE**  
**BY: WILLIAM B. POLE, ESQ.** (via telephone)  
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ALSO PRESENT:

John Walker, Defendant (via telephone)

Marvin Reed, Defendant (via telephone)

Kenneth Crowe, Defendant (via telephone)

Phillip Kapp, Defendant (via telephone)

Viranousith Khamvongsa, IRS agent (via telephone)

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I N D E X

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Court to take matters under advisement and  
issue decision shortly

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Veronica F. Flores, CSR-RPR  
Official Court Reporter  
520 W. Soledad Avenue  
Hagatna, Guam 96910

|    |   |         |
|----|---|---------|
| 1  | May 6, 2020; 9:01 a.m.; Hagatna, Guam                               | 09:00AM |
| 2  | * * *   | 09:00AM |
| 3  | THE CLERK: Your Honor, all the parties are                          | 09:01AM |
| 4  | present.  | 09:01AM |
| 5  | THE COURT: All right, go ahead and call the case                    | 09:01AM |
| 6  | then.   | 09:01AM |
| 7  | THE CLERK: Okay, Your Honor. Come to order, the                     | 09:01AM |
| 8  | District Court of Guam is now in session, the Honorable             | 09:01AM |
| 9  | Michael J. Bordallo presiding on Criminal Case 18-00010, USA        | 09:01AM |
| 10 | <i>versus John D. Walker, Marvin R. Reed, Kenneth R. Crowe,</i>     | 09:01AM |
| 11 | <i>Phillip T. Kapp, Randall Rogers, and Hansen Helicopters</i> on a | 09:01AM |
| 12 | Motion Hearing on an Amended Motion for Hearing to Address          | 09:01AM |
| 13 | Potential Conflict of Interest and a Motion for Protective          | 09:01AM |
| 14 | Order, Prevent Removal of Evidence, Schedule Inspection,            | 09:01AM |
| 15 | Prevent Harassment of Witnesses.                                    | 09:02AM |
| 16 | Counsels, please state your appearance, starting                    | 09:02AM |
| 17 | with the government. And we'll go from Defendant 1 all the          | 09:02AM |
| 18 | way down. Thank you.  | 09:02AM |
| 19 | MR. LEON GUERRERO: Buenas and hafa adai, Your                       | 09:02AM |
| 20 | Honor, this is Assistant U.S. Attorney Stephen Leon Guerrero.       | 09:02AM |
| 21 | Also present with me is IRS Agent Sith Khamvongsa. Also             | 09:02AM |
| 22 | present is co-counsel, Special Assistant U.S. Attorney Marie        | 09:02AM |
| 23 | Miller.   | 09:02AM |
| 24 | MS. MILLER: Hafa adai, Your Honor.                                  | 09:02AM |
| 25 | THE COURT: Hafa adai.   | 09:02AM |

1                   MR. MARTIN: Your Honor, this is Mack Martin. I 09:02AM  
2 represent John Walker. I'm getting him on the other line. I 09:02AM  
3 had accidentally disconnected him, but he'll be on the phone 09:02AM  
4 in just a moment. 09:02AM

5                   THE COURT: And is local Counsel, Jim Maher, also 09:02AM  
6 on or is it just you, Mr. Martin? 09:02AM

7                   MR. MARTIN: Mr. Maher is on. 09:02AM

8                   THE COURT: Okay. All right, thank you. 09:02AM

9                   MR. PEREZ: Good morning, Your Honor, Peter Perez 09:02AM  
10 present with Mr. Reed by telephone. 09:02AM

11                  THE COURT: Okay. Thank you. 09:03AM

12                  MR. LUJAN: Good morning, Your Honor, -- Lujan 09:03AM  
13 and, you know, and also on the phone is Gregory Nicolaysen on 09:03AM  
14 behalf of Rufus Crowe and Mr. Nicolaysen will be arguing on 09:03AM  
15 behalf of Mr. Crowe. 09:03AM

16                  MR. NICOLAYSEN: Good morning, Your Honor, Greg 09:03AM  
17 Nicolaysen here from Los Angeles. 09:03AM

18                  MR. POLE: Attorney William Pole, Your Honor -- 09:03AM  
19 go ahead. 09:03AM

20                  THE COURT: Go ahead, go ahead. 09:03AM

21                  MR. POLE: William Pole, Your Honor, on behalf of 09:03AM  
22 Randall Rogers. He's in Georgia. 09:03AM

23                  THE COURT: Okay. 09:03AM

24                  MR. MCCONWELL: Edward McConwell, Laura McConwell 09:03AM  
25 on behalf of Phillip Kapp, and Mr. Perez is on the phone too. 09:03AM

|    |   |         |
|----|---|---------|
| 1  | (Pause.)  | 09:03AM |
| 2  | THE COURT: All right.   | 09:03AM |
| 3  | MR. HAN: This is Ed Han for Hansen Helicopters.               | 09:03AM |
| 4  | THE COURT: Okay, and Mr. Nicolaysen, on behalf                | 09:03AM |
| 5  | of Mr. Lujan, has Mr. Nicolaysen filed his pro hac vice in    | 09:03AM |
| 6  | this case already?  | 09:04AM |
| 7  | MR. NICOLAYSEN: Yes, Your Honor, it was done two              | 09:04AM |
| 8  | years ago.  | 09:04AM |
| 9  | THE COURT: Okay. All right. So he -- I haven't                | 09:04AM |
| 10 | seen but I saw -- all right. Thank you. All right. Let's go   | 09:04AM |
| 11 | for the first matter before the Court is the amended motion   | 09:04AM |
| 12 | for a hearing to address potential conflicts and what I don't | 09:04AM |
| 13 | need is I don't need a repeat of anything that's contained in | 09:04AM |
| 14 | the briefs.   | 09:04AM |
| 15 | So beginning with the government, is there                    | 09:04AM |
| 16 | anything in addition to what's been filed that you wish the   | 09:04AM |
| 17 | Court to be aware of?   | 09:04AM |
| 18 | MR. LEON GUERRERO: Yes, yes, Your Honor. Thank                | 09:04AM |
| 19 | you. Stephen Leon Guerrero. So really, in addition to, you    | 09:04AM |
| 20 | know, the arguments that were raised in our filing, it has    | 09:04AM |
| 21 | come to our attention that there is in fact a joint defense   | 09:04AM |
| 22 | agreement amongst the defendants and that was something we    | 09:04AM |
| 23 | weren't aware of or sure of when we initially filed this      | 09:04AM |
| 24 | motion, and because we've been made aware of that, you know,  | 09:04AM |
| 25 | we're simply asking the Court to make sure that there's no,   | 09:05AM |

1 you know, potential for conflict of interest in any way to be 09:05AM  
2 able to conduct an in camera review of that joint defense 09:05AM  
3 agreement to determine if there's any potential for conflict 09:05AM  
4 of interest. You know, the big concern, you know, that the 09:05AM  
5 government has is, we have Defendant Hansen who wasn't a 09:05AM  
6 defendant in the initial indictment, um, is a defendant now, 09:05AM  
7 and our concern is, if Defendant Hansen is paying the legal 09:05AM  
8 fees of its co-defendants, you know, there is a potential for 09:05AM  
9 conflict of interest if one of these defendants chooses to 09:05AM  
10 want to cooperate and assist the government against its 09:05AM  
11 co-defendants but can't because Defendant Hansen is paying its 09:05AM  
12 attorneys fees. 09:05AM

13 So, you know, that is a conflict of interest that 09:05AM  
14 the government is trying to avoid. The other thing, too, is 09:05AM  
15 you know, what we want to point out in addition is, you know, 09:06AM  
16 we had attorney Martin who, you know, it's our position, was 09:06AM  
17 representing Defendant Hansen and Defendant Walker at the same 09:06AM  
18 time. And so, you know, that was evident in the sense that 09:06AM  
19 you know, now, you know, they have attorney Han who's now 09:06AM  
20 representing Defendant Hansen. But, you know, since the 09:06AM  
21 indictment, you know, there's multiple layers of the potential 09:06AM  
22 for conflict of interest to arise. 09:06AM

23 At one point, attorney McConwell, and this was 09:06AM  
24 noted in our filing ECF 416, you know, we have attorney 09:06AM  
25 McConwell that sought to deregister aircraft with the FAA. 09:06AM

1 And what's important to note is these aircraft that he's 09:06AM  
2 looking to deregister belong to subsidiaries of Defendant 09:06AM  
3 Hansen, again, who at least at one time was being represented 09:07AM  
4 by attorney Martin. 09:07AM

5 So, you know, we have that potential conflict of 09:07AM  
6 interest where attorney McConwell, in essence, representing 09:07AM  
7 these Defendant Hansen subsidiaries and trying to deregister 09:07AM  
8 these aircraft with the FAA. We also have Defendant Crowe and 09:07AM  
9 Defendant Crowe either has a position and/or role with these 09:07AM  
10 Vanuatu subsidiaries. And the same thing with Defendant 09:07AM  
11 Crowe, he sought to deregister aircraft with the FAA, again, 09:07AM  
12 creating this potential layer of a conflict, not only with 09:07AM  
13 himself, but again, attorney Martin and others. 09:07AM

14 So, you know, that -- you know, the big thing 09:07AM  
15 with the government, Your Honor, bringing this motion is just 09:07AM  
16 really having a hearing to ensure that, you know, we point out 09:07AM  
17 the concerns that we have and, you know, the different 09:07AM  
18 scenarios that we believe that there may be a potential 09:08AM  
19 conflict of interest. And, you know, ultimately, it will be 09:08AM  
20 the Court to make that determination if a conflict or not even 09:08AM  
21 just an actual conflict but the potential for a conflict 09:08AM  
22 exists and that's merely what the government is just trying to 09:08AM  
23 do, we have an obligation to bring it to the Court's attention 09:08AM  
24 if we feel that there is a potential and that's what we did. 09:08AM  
25 And so with those arguments, Your Honor, we submit, unless my 09:08AM

1 co-counsel, SAUSA Miller, has anything else she'd like to add. 09:08AM

2 MS. MILLER: I do not. I do not. Thank you, 09:08AM  
3 Your Honor. Thank you, Stephen. 09:08AM

4 THE COURT: All right. Thank you. Let me begin 09:08AM  
5 with Mr. Walker's Counsel, Mr. Martin, you can go ahead and 09:08AM  
6 address if you have addition to add other than what's been 09:08AM  
7 filed? 09:08AM

8 MR. MARTIN: Your Honor, I accidentally 09:08AM  
9 disconnected myself, so when I picked up, Mr. Leon Guerrero 09:08AM  
10 was talking about Hansen and attorney's fees being paid. 09:08AM  
11 Anything before then, I didn't hear and I apologize. I 09:09AM  
12 accidentally disconnected, but let me just briefly say my 09:09AM  
13 technology, Your Honor, is not that great. Let me just -- 09:09AM

14 THE COURT: Well, let me just -- I guess, if I 09:09AM  
15 can attempt to bring you up to speed, Counsel has just brought 09:09AM  
16 up that there in fact exists a joint defense agreement and 09:09AM  
17 then the obvious concern about the conflicts. He referenced 09:09AM  
18 Mr. McConwell may be representing subsidiaries of Hansen in 09:09AM  
19 attempts at deregistration. The Court has reviewed those 09:09AM  
20 requests, the deregistrations that were filed as exhibits and 09:09AM  
21 the conflicts that may be associated with that. So that's 09:09AM  
22 kind of where the government was. Go ahead, you can then now 09:09AM  
23 argue to the Court if you have anything you wish the Court to 09:09AM  
24 be aware of other than what's been filed. 09:09AM

25 MR. MARTIN: Your Honor, very briefly. I 09:09AM

1 represent John Walker. I don't represent Hansen, I don't 09:09AM  
2 represent anyone else. My loyalties are to John Walker. He's 09:10AM  
3 aware of that. He's previously executed a waiver of conflict 09:10AM  
4 of interest in this case as relation to all other defendants 09:10AM  
5 and on behalf of Hansen, a waiver. But there's -- I 09:10AM  
6 understand -- I've been doing this for a long, long time. I 09:10AM  
7 understand what a conflict is. And if the government wants to 09:10AM  
8 make an offer to us for us to cooperate against them, I'm sure 09:10AM  
9 willing to hear them. I don't think Hansen is going to impact 09:10AM  
10 my loyalty or duties to John Walker in any way shape or form 09:10AM  
11 if that's a concern of theirs. I will advise the Court that 09:10AM  
12 we all do have a common defense. Our common defense is we 09:10AM  
13 haven't done anything wrong, but that doesn't create a 09:10AM  
14 conflict of interest. I think the issues are clearly set out 09:10AM  
15 in the briefs filed by all the parties and I would stand on 09:10AM  
16 that, Judge. 09:10AM

17 THE COURT: All right. Thank you, Mr. Martin. 09:10AM  
18 Let me -- go ahead, I'm sorry. 09:10AM

19 (Pause.) 09:11AM

20 THE COURT: We may have lost Mr. Martin again. 09:11AM

21 MR. MARTIN: No, I'm here. I'm here, Judge. Can 09:11AM  
22 you hear me? 09:11AM

23 THE COURT: Yes, okay. Is that it, Mr. Martin? 09:11AM

24 MR. MARTIN: That's it, and I think my Counsel -- 09:11AM  
25 my client's on the phone, if you need a waiver from him, he 09:11AM

1 can orally do it and if we need to do another one, we're happy  
2 to do that.

3 THE COURT: All right. Let me just move up the  
4 line. Mr. Perez, anything on behalf of Mr. Reed?

5 MR. PEREZ: Just briefly, Your Honor. First, we  
6 join in the opposition filed by co-defendants in Document 415  
7 and 417. I would just reiterate that my loyalty as Counsel is  
8 to Defendant Reed only. I would also point out that Mr. Reed  
9 also signed a waiver which was submitted to the Court  
10 previously.

11 I would just also submit that the government has  
12 made no threshold showing of any conflict and I would also  
13 just point out that the issue regarding the conflict based  
14 upon payment of fees was raised previously by the government  
15 addressed by this Court with Judge Manibusan and was denied  
16 back then and this is the same issue that's being raised again  
17 and I have nothing further to add other than that.

18 THE COURT: All right. Mr. Pole, anything to add  
19 on behalf of Mr. Rogers?

20 MR. POLE: Your Honor, I would just add that of  
21 course, again, my loyalty is to Mr. Rogers and he's only on  
22 one count. So that even if there was a conflict for the other  
23 defendants, which we don't see, it wouldn't be imputed to my  
24 client, Your Honor.

25 THE COURT: All right. On behalf of Mr. Kapp,

1 Mr. McConwell or Tony? 09:12AM

2 MR. MCCONWELL: This is Mr. McConwell, Your 09:12AM

3 Honor. I join in that. My loyalty is to Mr. Kapp. He's also 09:12AM

4 waived any potential conflict. I do not believe there's a 09:12AM

5 conflict with regard to the administrative matters we've been 09:12AM

6 dealing with, with regard to the FAA enforcement case or the 09:12AM

7 letter, or e-mail that you got from me to another Counsel in 09:12AM

8 this case urging them to go ahead and allow deregistration. I 09:13AM

9 might point out to you they have blocked every deregistration 09:13AM

10 of aircraft in the registry right now and I think they have 09:13AM

11 something like 58 hold orders, so they're trying to block 09:13AM

12 deregistration by Hansen of the right to deregister their 09:13AM

13 aircraft. But my client has no objection to the network that 09:13AM

14 I've done for the Vanuatu corporations and has executed the 09:13AM

15 waiver. 09:13AM

16 THE COURT: All right. Thank you, Mr. McConwell. 09:13AM

17 On behalf of Mr. Crowe, Mr. Nicolaysen? 09:13AM

18 MR. NICOLAYSEN: Yes, thank you, Your Honor, Greg 09:13AM

19 Nicolaysen from Los Angeles speaking on behalf of Mr. Crowe 09:13AM

20 together with my co-Counsel David Lujan. Your Honor, I ask 09:13AM

21 the Court to take note as our papers mention of the waiver of 09:13AM

22 conflicts filed on February 22nd of 2019, PACER 09:13AM

23 Document 2-0-4. That waiver resolves any issue of any 09:14AM

24 potential conflict and there certainly was no actual conflict 09:14AM

25 that was being raised by the government in its initial filing 09:14AM

1 back in 2018. And so looking at February of 2019 forward in  
2 time up to the present time, the government has not addressed  
3 any circumstance that would suggest that during the period  
4 subsequent to the filing of the conflict waivers, which Judge  
5 Manibusan accepted, there has been anything to raise divided  
6 loyalties or any other type of conflict in regard to the  
7 representation of Mr. Crowe. And in my view, that this is  
8 simply, as our papers argue, an effort to delay the trial.

9                   In regard to the filing of the amended motion,  
10 it's all in our papers, I won't repeat the argument here, but  
11 there is certainly no basis for any type of conflict inquiry  
12 or even for the filing of a supplemental waiver. There is no  
13 need for any additional waiver in regard to Mr. Crowe.

14                   THE COURT: All right. Thank you,  
15 Mr. Nicolaysen. I apologize for butchering your name but I  
16 think I got it now.

17                   MR. NICOLAYSEN: No, it's fine.

18                   THE COURT: Mr. Han, on behalf of Hansen  
19 Helicopters, anything -- because you're -- I guess the amended  
20 complaint that is now Hansen formally as a defendant.

21                   MR. HAN: Yes, Your Honor. Um, nothing else to  
22 add except the fact that I'd be loyal to the Hansen  
23 Helicopters, the corporation.

24                   THE COURT: All right. Thank you.

25                   MR. LEON GUERRERO: Your Honor, this is AUSA Leon

1 Guerrero, just a brief rebuttal.

2 THE COURT: Okay. Go ahead.

3 MR. LEON GUERRERO: Now, I would say that the, 09:15AM  
4 you know, the circumstances have changed and really those 09:15AM  
5 waivers that were previously submitted to the Court are 09:15AM  
6 outdated because at the time, Defendant Hansen was not a 09:16AM  
7 co-defendant in the case. So I would say that the 09:16AM  
8 circumstances have changed and really those -- the initial 09:16AM  
9 waivers that were provided to the Court really are no longer 09:16AM  
10 pertinent and they're outdated, given the current superseding 09:16AM  
11 indictment. 09:16AM

12 THE COURT: All right. 09:16AM

13 MR. NICOLAYSEN: Your Honor, on behalf of 09:16AM  
14 Mr. Crowe, I'd like to respond since it was in response to my 09:16AM  
15 comment. The government has an obligation to make a prima 09:16AM  
16 facie showing that there is a reason to be concerned about a 09:16AM  
17 serious potential for conflict or an actual conflict. The 09:16AM  
18 mere fact that the corporate entity was not a defendant at the 09:16AM  
19 time the original conflict waivers were filed in February 2019 09:16AM  
20 and we now have the corporate defendant in this case, that is 09:16AM  
21 not a sufficient change of circumstance to suggest that there 09:16AM  
22 are divided loyalties that would warrant further inquiry. And 09:17AM  
23 the government needs to demonstrate that there is some basis 09:17AM  
24 for divided loyalties sufficient to conduct further inquiry in 09:17AM  
25 camera or otherwise. If the Court wishes to conduct further 09:17AM

1 inquiry, I would recommend that that be done outside the  
2 government's presence and the Court can take oral waivers by  
3 phone at this hearing in an under-seal proceeding and we can  
4 have it resolved now. I don't think it's necessary, but I  
5 think the defendants would be prepared to do that if the Court  
6 feels that the need has arisen for a supplemental waiver.

7 THE COURT: No, the Court has reviewed the  
8 defendants' briefs and also the arguments with respect to the  
9 nature of the initial investigation and the government's  
10 awareness certainly since 2015 of the involvement of -- well,  
11 the newest defendant, Hansen Helicopters, and that the  
12 investigation really was -- was -- was geared towards them  
13 from the beginning.

14 The Court, I think, just needs to remind the  
15 lawyers to, you know, I'm sure the lawyers are aware of their  
16 duty under Rule 1.8 and just make sure that you guys remain in  
17 compliance with the rules and everybody's affirmatively stated  
18 their loyalty to their specific client -- the insistence of a  
19 defense agreement and whether or not compensation may or may  
20 not be coming from -- from -- from persons other than their  
21 client. So let's just make sure we remain cognizant of that  
22 and remain in compliance with that as well as 1.6 dealing with  
23 confidentiality with respect to your individual client. Okay?  
24 I don't think the Court needs to be concerned with that. The  
25 second motion before the Court is -- so the Court will take

1 that matter under advisement and will issue an order as soon  
2 as possible.

3                   The other motion before the Court is motion for  
4 protective order by the government to schedule an inspection  
5 and to prevent harassment of the witnesses. Again, the Court  
6 has reviewed all the documents that have been filed  
7 previously. Mr. Leon Guerrero or Ms. Martin [sic], is there  
8 anything the government wishes to add with respect to that  
9 motion?

10                  MS. MILLER: Yes, Your Honor, this is Marie  
11 Miller, can you hear me?

12                  THE COURT: I'm sorry, Ms. Miller, I apologize.

13                  MS. MILLER: Oh, that's okay. Can you hear me  
14 okay?

15                  MR. MARTIN: Your Honor, may I interject  
16 something first?

17                  THE COURT: And who is this?

18                  MR. MARTIN: This is Mr. Martin, Your Honor. I  
19 represent Mr. Walker. I had a suggestion about this motion if  
20 I might interject and then if you want to proceed, that's  
21 fine.

22                  THE COURT: Go ahead.

23                  MR. MARTIN: That the government has also filed,  
24 issued 62 subpoenas for the production of these same identical  
25 helicopters addressing almost the same issues, and rather than

1 being repetitive, I was going to suggest we might set both  
2 arguments for the same time at a later date, because the same  
3 issues will virtually be addressed in those arguments that are  
4 going to be addressed here. And if the Court wants to  
5 proceed, that's fine, but I wanted to make that suggestion.

6 THE COURT: So Ms. Miller, what is the briefing  
7 period -- I assume, Mr. Martin, you're referring to a motion  
8 to quash the subpoenas then, there's a motion to quash that's  
9 pending; is that correct?

10 MR. MARTIN: That's correct, Your Honor.

11 THE COURT: Does anybody know what the briefing  
12 schedule is for that? I don't know it off hand.

13 MS. MILLER: Your Honor, there isn't anything  
14 scheduled yet in terms of hearing that motion and the  
15 government does not concede that the Rule 16 motion is the  
16 same as the Rule 17 motion. Those are two distinct procedural  
17 processes and it is inappropriate to say that they should be  
18 argued and heard at the same time. The motion for a  
19 protective order is a critical motion that should be heard and  
20 ruled on by the Court as soon as possible and since we have  
21 this hearing time and no one has before now recommended that  
22 we move it and combine it with the Rule 17 motion and I  
23 suggest we do go forward, Your Honor.

24 THE COURT: All right. Go ahead, Ms. Miller,  
25 then. Mr. Martin, we'll hear the argument and go from there.

1 MS. MILLER: Thank you, Your Honor. So I know  
2 Your Honor does not want to hear anything that has already  
3 been previously filed. I will however bring something to the  
4 Court's attention that the Court may not be fully aware of:

5 Number one, the FAA has tried to inspect these  
6 helicopters 29 times. There are 29 letters that have gone  
7 from the FAA to the defendants seeking repeatedly to inspect  
8 these helicopters to ensure that they are safe and air-worthy.

9 One of those requests was on Helicopter N No.  
10 9068-F, as in Frank. And that particular aircraft was one  
11 that crashed and killed a pilot on September 3rd of 2015. And  
12 the defendants continue to refuse to produce the helicopters  
13 for inspection by the FAA for years, making numerous excuses  
14 similar to the excuses that they made in response to the  
15 government's motion here, that it would be too difficult to  
16 pull the helicopters in, that it is too challenging, that is  
17 it would cost them too much money, and our response is, too  
18 bad. The defendants actually are the ones who sought the  
19 registration of all of these helicopters by the FAA. And when  
20 they sought that registration by the FAA, they certified under  
21 penalty of perjury that they were seeking the registration to  
22 comply with all of the FAA rules and conditions, and since  
23 then, they have done anything but comply with those rules and  
24 conditions.

25 In this particular case, Your Honor, there has

1 been a plea agreement entered into by an FAA inspector who 09:23AM  
2 admitted to his role in the honest services fraud and his role 09:23AM  
3 in issuing 30 airworthiness certificates, 3-0, to these 09:23AM  
4 defendants, without having actually conducted a proper 09:23AM  
5 inspection of either the aircraft or the legitimate paperwork 09:23AM  
6 tied to the aircraft. 09:23AM

7 Another thing that Your Honor hasn't seen in the 09:23AM  
8 pleadings is that there have been nine deaths associated with 09:23AM  
9 Hansen-owned helicopters, six serious injuries associated with 09:23AM  
10 Hansen-owned and -operated helicopters. We know that the 09:23AM  
11 defendants have, "deregistered" and "reregistered" aircraft in 09:24AM  
12 the Philippines before. 09:24AM

13 For example, Your Honor, one of the aircraft, 09:24AM  
14 N369TG, Mr. Crowe said that Echo Air owned that aircraft. 09:24AM  
15 Echo Air is one of the numerous Vanuatu corporations created 09:24AM  
16 by the defendants for, according to them, insurance purposes. 09:24AM  
17 And despite the fact that Mr. Crowe indicated to the FAA that 09:24AM  
18 that aircraft is owned by Hansen outright and, therefore, 09:24AM  
19 Hansen has the right to deregister it and to reregister it in 09:24AM  
20 the Philippines, the FAA also has certification from Venezuela 09:24AM  
21 that that identical aircraft is registered there by a third 09:24AM  
22 party. Every single helicopter was registered with the FAA. 09:24AM  
23 And another example is N444GJ. Every single request for 09:25AM  
24 paperwork regarding that aircraft, even though it was 09:25AM  
25 allegedly a Vanuatu-owned aircraft, the defendants asked that 09:25AM

1 all that paperwork be sent to Guam and this is something that  
2 they've done over and over and over again.

09:25AM

09:25AM

3 We have a letter that we produced to you, Your  
4 Honor, from the Philippines, indicating -- not only from the  
5 Philippines by the way, Your Honor, from Vanuatu, from  
6 Palawan, confirming that the aircraft that the defendants  
7 ostensibly deregistered here to reregister there were never  
8 in fact registered or their registrations were allowed to fail  
9 in the case of the Philippines.

09:25AM

Criminal Case No. 18-00010, USA v. Walker, et al.

1 Mr. Walker requesting the FAA registration after that aircraft 09:27AM  
2 was supposedly exported but we know it was never exported, nor 09:27AM  
3 did they produce to the Court another letter to the FAA, 09:27AM  
4 indicating that they were waiting for Vanuatu to confirm that 09:27AM  
5 the helicopter was never registered there and then they also 09:27AM  
6 didn't produce to the Court the Vanuatu confirmation that the 09:27AM  
7 aircraft was never registered there. We have letters from the 09:27AM  
8 defendants going to the FAA over the last ten years, talking 09:27AM  
9 about aircraft being exported, then saying, no, we never 09:27AM  
10 exported this aircraft, and meanwhile, the aircraft is in 09:27AM  
11 registration limbo, but we know, based on the information we 09:28AM  
12 received from the defendants, that these helicopters are 09:28AM  
13 making them millions of dollars a year, despite the fact that 09:28AM  
14 they have not been properly inspected. 09:28AM

15 Finally, Your Honor, they want to ostensibly 09:28AM  
16 remove the aircraft to the Philippines but we also produced a 09:28AM  
17 document for you from the Philippines referring to the 09:28AM  
18 defendants' utter defiance of civil aviation law and disregard 09:28AM  
19 of their responsibilities to the Philippines equivalent of the 09:28AM  
20 FAA as they have here. 09:28AM

21 Your Honor, you have the authority under Rule 16 09:28AM  
22 of the Federal Rules of Criminal Procedure to enter a 09:28AM  
23 protective order to allow the inspection of these helicopters 09:28AM  
24 and also to assure that they are not deregistered and not 09:28AM  
25 moved outside of the jurisdiction of the United States. When 09:28AM

1 you consider what has happened in this case and how the 09:29AM  
2 defendants have repeatedly, repeatedly lied to the FAA and 09:29AM  
3 misrepresented and they are still using these helicopters to 09:29AM  
4 transport pilots and mechanics, putting all these individuals 09:29AM  
5 in danger, we ask this Court to exercise your jurisdiction 09:29AM  
6 under the rule and under the case law that we cited to grant 09:29AM  
7 the motion for a protective order, to require the defendants 09:29AM  
8 to finally bring these helicopters back to Guam for a proper 09:29AM  
9 inspection by the government and to make them available to the 09:29AM  
10 government. And I don't wish to add anything else other than 09:29AM  
11 what was already previously filed with the Court regarding the 09:29AM  
12 witness tampering, any other issues. Thank you, Your Honor. 09:29AM  
13 THE COURT: All right. Let's -- Mr. Martin, on 09:29AM  
14 behalf of Mr. Walker? 09:29AM

15 MR. MARTIN: Yes, Your Honor, thank you very 09:30AM  
16 much. Your Honor, I'm not sure that the government 09:30AM  
17 understands the purpose of Rule 16 discovery. They asked for 09:30AM  
18 discovery in this criminal case. They don't represent the 09:30AM  
19 Department of Transportation, they don't represent the FAA, 09:30AM  
20 they don't represent the Federal Bureau of Investigation, they 09:30AM  
21 don't represent Mr. Cislo, who's their star witness that they 09:30AM  
22 talk about in this case. Their one -- their alleged purpose 09:30AM  
23 for this is for safety and airworthiness and they talk about 09:30AM  
24 29 letters that have been sent ten years ago before I was even 09:30AM  
25 involved in this case. They admit they sent me one letter 09:30AM

1 that was attached to my motion. I believe it was 09:30AM  
2 December 12th saying, "Please tell us when we can inspect 09:30AM  
3 these helicopters" and I responded to the letter, I asked them 09:30AM  
4 to tell me what authority they had to do that. I said if you 09:30AM  
5 got a problem with it, we'll take it up with Judge Gatewood or 09:30AM  
6 call me on the phone. Neither one of those occurred. They 09:31AM  
7 didn't call me, we didn't take it up with Judge Gatewood. I 09:31AM  
8 figured they realized that they didn't have the authority to 09:31AM  
9 do that, so we went on. 09:31AM

10                 Secondly, they talk about the case law in support 09:31AM  
11 of their motion for protective order. They cited no case law, 09:31AM  
12 Your Honor. Rule 16 doesn't -- the way I read the rule, 09:31AM  
13 doesn't give the government the authority to come in and 09:31AM  
14 inspect evidence that -- for materials that -- in a case, 09:31AM  
15 unless we're going to use it and I, in my motion said, we're 09:31AM  
16 not going to produce any helicopters, we're not going to use 09:31AM  
17 any helicopters at trial so we shouldn't -- we shouldn't 09:31AM  
18 produce it. 09:31AM

19                 Thirdly, Your Honor, the thing that offends me 09:31AM  
20 the most, and I use that word very lightly, is the personal 09:31AM  
21 attacks on lawyers. The government has misrepresented in 09:31AM  
22 their motions things that my co-Counsel have been involved in, 09:31AM  
23 in this case. In particular, in reference to Mr. Cislo, they 09:32AM  
24 make blatant allegations that Mr. McConwell confronted and 09:32AM  
25 accosted Mr. Cislo, which did not occur. The government 09:32AM

1 finally in January provided to us a 302 that's been identified 09:32AM  
2 as FBI Hansen Document No. 046383, where during a proffer 09:32AM  
3 session, the government alleged that Mr. McConwell confronted 09:32AM  
4 him inside his hangar. Mr. Cislo, and I'm reading from the 09:32AM  
5 FBI 302 itself now, says "On Saturday, July 14th, a male 09:32AM  
6 individual initiated contact with Cislo outside, outside of 09:32AM  
7 his private hangar." I made representations to the Court, as 09:32AM  
8 an officer of the Court, quite honestly, what occurred by mere 09:32AM  
9 happenstance on July 14th, and for them to make some type of 09:33AM  
10 outrageous allegations that he tried to talk to him and he 09:33AM  
11 tried to confront him about the case, he didn't intimidate him 09:33AM  
12 at all, Your Honor. Mr. Cislo doesn't say that. Mr. Cislo 09:33AM  
13 says -- even mentions that Mr. McConwell advised him that he 09:33AM  
14 attempted to contact Cislo's attorney, they did not receive a 09:33AM  
15 reply, consistent with exactly what I put in the motion, Your 09:33AM  
16 Honor. No Counsel in this case has done anything 09:33AM  
17 inappropriate. And I find it kind of offensive that the 09:33AM  
18 government would allege that there's something done 09:33AM  
19 inappropriate by any Counsel. There's no basis for a 09:33AM  
20 protective order. We all know the rules of ethics in this 09:33AM  
21 case just like we know the rules relating to a conflict of 09:33AM  
22 interest. I ask the Court to deny the government's motion, 09:33AM  
23 Your Honor. 09:33AM

24 THE COURT: All right. Thank you, Mr. Martin. 09:33AM  
25 Mr. Nicolaysen, anything to add? 09:33AM

1 MR. NICOLAYSEN: Yes, Your Honor. Thank you. 09:33AM

2 Rule 16 is a very narrow and specific rule in criminal 09:34AM

3 proceedings. It deals with discovery by both sides. The 09:34AM

4 issuance of protective orders provide restrictions under 09:34AM

5 Rule 16 that focus on the production of information by the 09:34AM

6 government typically by which parameters are being established 09:34AM

7 regarding the use of such evidence by the parties and we have 09:34AM

8 these protective orders in gang cases, identity theft cases, 09:34AM

9 etc., which is all about regulating how evidence is going to 09:34AM

10 be managed and used by the parties. 09:34AM

When the government seeks a protective order with  
respect to the defense, that protective order under Rule 16  
must be tailored to defense evidence. That's not what's  
happening here. I'll give an example. If the defendants  
designated as a trial exhibit, a particular FAA-approved part  
that was used on the helicopters during the time period of the  
indictment, 2012 up to May 2018 when the first indictment was  
filed, and we are going to be having testimony at trial  
regarding that part, part of our presentation regarding  
helicopters, then the Court would be well within its rights  
and the government likewise, to direct the defense to make  
that part available for inspection because that part is now  
being designated by the defense as a trial exhibit. Now  
that's not happening -- the defense is not going to be  
designating helicopters as defense exhibits. That's just not

1 going to happen. And therefore, the helicopters, which are 09:35AM  
2 the subject of this motion, do not fall within the purview of 09:35AM  
3 Rule 16. They are not reciprocal discovery from the defense 09:35AM  
4 to the government and the Court cannot issue any protective 09:35AM  
5 orders with regard to those helicopters because those 09:36AM  
6 helicopters simply don't fall within the parameters of Rule 16 09:36AM  
7 and the government has made it clear in its filings, and as 09:36AM  
8 recently as yesterday in Document 460, that their motion for 09:36AM  
9 protective order is being brought under Rule 16. It's 09:36AM  
10 referred to as, "the government's Rule 16 motion." So 09:36AM  
11 therefore, the request by the government for (background 09:36AM  
12 noise) to inspect the helicopters, order directing Hansen not 09:36AM  
13 to transfer these helicopters as part of some sort of a 09:36AM  
14 protective order, all of that has to be justified within the 09:36AM  
15 very narrow and specific criteria of Rule 16, and because the 09:36AM  
16 helicopters don't fall within Rule 16, they are not reciprocal 09:36AM  
17 discovery, they are not going to be trial exhibits, this 09:36AM  
18 Court, and I say this with respect, has no authority to order 09:36AM  
19 any inspection. And what the government is doing, is arguing 09:36AM  
20 its case as if it were before an administrative body. Marie 09:37AM  
21 Miller is from the Department of Transportation, she's well 09:37AM  
22 versed in FAA administrative procedures and the arguments that 09:37AM  
23 she has presented here, which pertain to which she considers 09:37AM  
24 safety issues, that there have been numerous requests to 09:37AM  
25 inspect, that in her judgment have been ignored, and so on all 09:37AM

1 of that, goes to the issue of the FAA and the regulatory 09:37AM  
2 agency having the authority to suspend or revoke 09:37AM  
3 registrations, suspend or revoke airworthiness certificates. 09:37AM  
4 That's the power of a regulatory agency, same thing with the 09:37AM  
5 FDA over a drug company, the ACF over a gun manufacturer and 09:37AM  
6 so on. The arguments presented by Ms. Miller are suited for 09:37AM  
7 the administrative environment where Hansen or whoever would 09:37AM  
8 be, you know, deemed the appropriate owner of the helicopters, 09:38AM  
9 would be subject to some administrative sanction for failing 09:38AM  
10 to satisfy the safety and other obligations including making 09:38AM  
11 the helicopters available for inspection. That's an 09:38AM  
12 administrative issue. That has nothing at all to do with the 09:38AM  
13 criminal proceeding or the narrow criteria under Rule 16. And 09:38AM  
14 I should emphasize that these helicopters, the vast majority 09:38AM  
15 of the ones that's listed in the superseding indictment, which 09:38AM  
16 for round numbers -- let's just use the number sixty, the vast 09:38AM  
17 majority of these helicopters have valid registrations and 09:38AM  
18 valid airworthiness certificates. In fact, registrations have 09:38AM  
19 three-year time tables and if Your Honor goes to [www.faa.gov](http://www.faa.gov) 09:38AM  
20 and you have the superseding indictment in front of Your Honor 09:38AM  
21 that has the table and all of these N numbers of the sixty 09:38AM  
22 helicopters and you just start typing these N numbers into the 09:39AM  
23 search engine on the home page, you'll get the profile of the 09:39AM  
24 helicopters and you will see that the vast majority of them 09:39AM  
25 have valid registrations. Well, in fact, valid registrations 09:39AM

1 that expire either this year, 2021, even 2022. That means the  
2 FAA has been renewing these registrations during the period of  
3 the investigation of this case which goes back at least to  
4 2015 and earlier, and during the prosecution of this case.

5 So when the government complains, as it does,  
6 that the helicopters are unsafe, and that we have refused  
7 inspections, those administrative arguments should be directed  
8 to the FAA as part of a claim that maybe the registrations  
9 should not have been renewed, maybe they should be suspended  
10 or revoked. But this is a motion under Rule 16 and none of  
11 the arguments the government has presented in its papers or  
12 here today orally have any relevance whatsoever to Rule 16.

13 Let me just close by speaking about the  
14 chronology of the superseding indictment. If Your Honor goes  
15 through the superseding indictment with an eye to the time  
16 periods of the different counts, and if the Court please, I'll  
17 be glad to do it, I have yellow highlighted it so I could  
18 recite all the paragraphs in the superseding indictment. Your  
19 Honor will see that the government has consistently framed the  
20 chronology of this prosecution from year 2012 up through May  
21 of 2018, which is the doorstep of the filing of the initial  
22 indictment, which was filed on May 31, 2018.

23 The superseding indictment, which was filed in  
24 December 2019, a year and a half later, has one substantive  
25 count that has to do with registrations that they claim was,

1 you know, improperly done on June 10th of 2018, a couple of 09:41AM  
2 weeks after the first indictment. But other than that one 09:41AM  
3 ministerial charge, the entire superseding indictment is based 09:41AM  
4 on the same chronology as the original indictment, which 09:41AM  
5 doesn't go beyond May of 2018, and of course we are now in May 09:41AM  
6 of 2020, two years later. 09:41AM

7 So the government cannot properly argue that 09:41AM  
8 there is anything about the current helicopters that are 09:41AM  
9 flying that has any relevance to the charges in the 09:41AM  
10 indictment. There is no allegation of continuity of 09:41AM  
11 misconduct, or that the charged conspiracy are ongoing 09:41AM  
12 conspiracies. It'd be very different in a RICO case. We've 09:41AM  
13 all seen RICO cases where, let's just use a gang or a mafia 09:41AM  
14 family where the defendants are on trial as members of a RICO 09:41AM  
15 enterprise that is still in existence through the ongoing 09:41AM  
16 prosecution and all the way up through a trial. And so when 09:42AM  
17 the mob family bosses in New York are on trial for being a 09:42AM  
18 member of -- you know, being a leader of the Gambino family, 09:42AM  
19 while they're in trial and while the prosecution is ongoing, 09:42AM  
20 the RICO enterprise is considered to be still active. And so 09:42AM  
21 it's still ongoing criminal activities. That's one of the key 09:42AM  
22 centers between RICO and conspiracy. Conspiracy, as we see in 09:42AM  
23 this case, has bookends; it has a beginning and an end. And 09:42AM  
24 it's critical to recognize that the government is seeking to 09:42AM  
25 have Court orders issued for inspections that the Court is not 09:42AM

1 authorized to issue, but the government is misunderstanding 09:42AM  
2 that today's helicopters have nothing to do with the time 09:42AM  
3 frame of the charge, because there's no allegation of any 09:42AM  
4 continuity of misconduct, that there's any crime being 09:42AM  
5 committed in 2020 that is relevant to the charge in this case, 09:42AM  
6 unless the government is planning to supersede. And if they 09:43AM  
7 are, I ask the government through Your Honor, tell us now so 09:43AM  
8 that we understand that; otherwise, based on chronology alone, 09:43AM  
9 the concept of inspection is completely irrelevant because of 09:43AM  
10 the two-year lapse between May of 2018 when the indictment 09:43AM  
11 charges them and May of 2020, which is where we are today. 09:43AM  
12 Those are my arguments to Your Honor and I would ask that the 09:43AM  
13 government's motion be denied. 09:43AM

14 THE COURT: All right. Mr. Perez or 09:43AM  
15 Mr. McConwell on behalf of Defendant Kapp, anything to add? 09:43AM

16 MR. PEREZ: Your Honor, I join in the opposition 09:43AM  
17 of 422, 424, 428 and 434 and we rest on those as well as the 09:43AM  
18 oral arguments presented by Mr. Martin and Mr. Nicolaysen. 09:43AM

19 MR. MCCONWELL: This is Edward McConwell, Your 09:43AM  
20 Honor, if I could respond a little bit here. I could respond 09:43AM  
21 to everything that Ms. Miller said and believe me, she's only 09:43AM  
22 told you a fraction of the story in this matter. There is 09:44AM  
23 issues that she just brushed over and not given you the whole 09:44AM  
24 story. 09:44AM

25 One example you may not be aware of, but there's 09:44AM

1 a motion to dismiss on lack of jurisdiction that's pending  
2 right now, it's been filed before the Court dealing with the  
3 validity or invalidity of the airworthiness cert -- or the  
4 registration certificates themselves.

5 MR. MILLER: Your Honor, I'm sorry to interrupt  
6 but I'm going to object to Mr. McConwell arguing anything  
7 relating to the motion to dismiss. I didn't ignore it. We're  
8 not here to argue it.

9 THE COURT: All right.

10 MR. MCCONWELL: I'm bringing the matter to the  
11 Court's attention. I wasn't going to argue it, but I do want  
12 to give one example of something she did bring up that is very  
13 important in this case. She highlights 9068 Fox Trot. Now,  
14 that's an aircraft that had an accident in September of 2015  
15 and the Court -- the FAA was aware as of that time and  
16 actually back in April of 2015 of an issue with regard to the  
17 validity or invalidity to the aircraft registrations. They  
18 acknowledged in their search warrant affidavit with regard to  
19 the search warrant that was issued from Guam by Judge  
20 Manibusan that 9068 Fox Trot was registered in the Philippines  
21 and because of that, and because of international law, that  
22 was an invalid registration, and at that point, absolutely  
23 knew they did not have jurisdiction over that aircraft, yet  
24 they plowed ahead and ignored the fact they didn't have  
25 jurisdiction with regard to that aircraft and the

1 investigation that ensued from that, but it goes to the entire 09:45AM  
2 line of Vanuatu corporations. They were totally aware of the 09:45AM  
3 existence of them, the number and that they were foreign 09:45AM  
4 corporations. That is implications that we'll be dealing with 09:46AM  
5 later. I'm not going to go through everything she said. 09:46AM  
6 There is a different story. There's more evidence that would 09:46AM  
7 be -- would neutralize the thing that she said and we could 09:46AM  
8 explain it to you, but it would take too long to do that. 09:46AM

9                 But I do want to go back to the Mr. Cislo thing 09:46AM  
10 at the airport. Mr. Cislo did not tell the truth to the FBI 09:46AM  
11 agents and that was an accidental meeting that occurred. We 09:46AM  
12 had no idea that he was going to even be there, didn't even 09:46AM  
13 knew he was. But for the way that has been misrepresented to 09:46AM  
14 the Court is very offensive and Mr. Martin's already spoke on 09:46AM  
15 my behalf and that's all I'm going to say about that, but I 09:46AM  
16 join in the pleadings that have been filed in this matter and 09:46AM  
17 ask that the motion for protective order be denied. 09:46AM

18                 And I do have my question for you, my 09:46AM  
19 understanding, and I've been doing this for over 50 years, 09:46AM  
20 that a lawyer has the ability to be able to interview 09:47AM  
21 witnesses that are identified by the government or the 09:47AM  
22 plaintiff or the adverse party. The government seems to say 09:47AM  
23 that we can't do that and our clients are not supposed to by 09:47AM  
24 their conditions of release, but the lawyers and we have 09:47AM  
25 ethical standards we have to follow, that we've done nothing 09:47AM

1 wrong and there seems -- seems to say we did and I'd like to 09:47AM  
2 know whether we are allowed to interview witnesses. I will 09:47AM  
3 tell you that I had one witness in this case say that he was 09:47AM  
4 told not to talk to anybody, including their lawyers, and that 09:47AM  
5 appeared to come from the government. 09:47AM

6 THE COURT: All right. Thank you, Mr. McConwell. 09:47AM  
7 Mr. Pete Perez, Jr., on behalf Mr. Reed? Anything? 09:47AM

8 MR. PEREZ: No, Your Honor. 09:47AM

9 THE COURT: All right. Mr. Pole, on behalf of 09:47AM  
10 anything -- Mr. Rogers, anything you wish to add? 09:47AM

11 MR. POLE: Your Honor, just two things, one, we 09:47AM  
12 continue to object and have objected to the government's 09:48AM  
13 painting the defendants as being -- all defendants being in 09:48AM  
14 control of the helicopters. As we have pointed out and it's 09:48AM  
15 as well clear from the superseding indictment, Mr. Randy 09:48AM  
16 Rogers has no authority over those helicopters and has nothing 09:48AM  
17 to do with those helicopters and shouldn't be painted with a 09:48AM  
18 stroke as the government is trying to do here or in trial. 09:48AM

19 The only other thing I'd like to point out, Your 09:48AM  
20 Honor, obviously while we join with all other defendants in 09:48AM  
21 the motion, we're primarily concerned with the issue of the 09:48AM  
22 right to interview witnesses and I just wanted to point out 09:48AM  
23 that one of the cases that was cited was *United States versus* 09:48AM  
24 *Brumel-Alvarez*, which is 991 F.2d 1452, and the reason I want 09:48AM  
25 to point out is that was decided by the Ninth Circuit in 1993 09:48AM

1 that found a *Brady* violation where the government failed to 09:48AM  
2 provide a DEA memo about one of their star witnesses on -- 09:49AM  
3 asking for the truth and I just want to point out that even 09:49AM  
4 though that was 1993 and therefore before the U.S. Supreme 09:49AM  
5 Court in *Kyles v. Whitley*, 514 U.S. 419, which wasn't decided 09:49AM  
6 until 1995, that case is still consistent with the U.S. 09:49AM  
7 Supreme Court that said that issues of *Brady* must be provided 09:49AM  
8 to defense Counsel and is not that it is grounds for 09:49AM  
9 dismissal. I think -- but we absolutely have a right to 09:49AM  
10 interview witnesses to receive information and the government 09:49AM  
11 provided nothing to suggest that even if this Court has the 09:49AM  
12 right to sanction one defense attorney for alleged misconduct, 09:49AM  
13 that it would have a right to sanction all defense attorneys 09:49AM  
14 for the same misconduct and not allow for a proper defense, 09:49AM  
15 that is, the interviewing of witnesses. I have nothing 09:49AM  
16 further to add, Your Honor. 09:49AM

17 THE COURT: Thank you, Mr. Pole. Mr. Han, 09:49AM  
18 anything on behalf of Hansen Helicopters other than what's 09:50AM  
19 been argued? 09:50AM

20 MR. HAN: Nothing to add, Your Honor. 09:50AM

21 THE COURT: All right. Ms. Miller, briefly in 09:50AM  
22 response to the arguments you heard from defense. 09:50AM

23 MS. MILLER: Yes, Your Honor. First of all, 09:50AM  
24 Mr. Martin actually said the letters that the government sent 09:50AM  
25 to us were ten years old, that's absolutely not true. We have 09:50AM

1 been sending them letters as recently as last year requesting 09:50AM  
2 inspection of these helicopters. I have letters dated April 09:50AM  
3 29, 2015, June 23, 2015, July 8, 2015, then we can 09:50AM  
4 fast-forward to May 20, 2016, July 20, 2016. Let's move 09:50AM  
5 ahead, May 14, 2018, July 2nd, 2019. I can go on and on, Your 09:50AM  
6 Honor, but the point is that is absolutely a misstatement of 09:50AM  
7 fact. 09:51AM

8                 The second thing is, Mr. Martin said that the 09:51AM  
9 government doesn't understand Rule 16 and I would disagree 09:51AM  
10 with that and I would also state the defense Counsel has 09:51AM  
11 basically just kind of skirted over the explicit language of 09:51AM  
12 Rule 16 which says that this Court has the authority to 09:51AM  
13 require the defendant to permit inspection by the government 09:51AM  
14 of tangible objects and it's not only those objects that the 09:51AM  
15 defendant intends to use in its case in chief because, again, 09:51AM  
16 a third misstatement by defense Counsel, which is that the 09:51AM  
17 government cited -- case law, the government did cite 09:51AM  
18 substantial case law to support its position, including case 09:51AM  
19 law that indicates that if the defendant intends to 09:51AM  
20 cross-examine any of the government's witnesses in a criminal 09:51AM  
21 case regarding evidence, that the government is entitled to 09:52AM  
22 view that evidence. It is not a violation of the defendant's 09:52AM  
23 Fifth Amendment privilege against self-incrimination and it is 09:52AM  
24 not necessary that the defendants use that evidence in their 09:52AM  
25 case in chief. And all that case law was cited by the 09:52AM

government to the Court, so I won't repeat it, but it is just completely ridiculous for defense to make that statement that no case law was cited.

The fourth thing, Your Honor, is I understand very well the distinction between administrative proceeding and a civil proceeding. As a matter of fact, it's going to be really interesting to hear what the defendants have to say when they turn around and argue that administrative proceedings are the most meaningful thing for the Court to consider, but in this case, yes, I'm an attorney with the DOT OIG. I'm also a former federal prosecutor with extensive experience in conspiracy cases.

And the fifth issue that I'd like to address as an experienced federal prosecutor is, a conspiracy is not completed until its abandoned. We don't have to supersede in order to argue, and we will argue, so all of the defense Counsel need to be put on notice right now, it's the government's contention that this conspiracy has not ended, the conspiracy has continued.

As a matter of fact, immediately after the indictment, the first indictment in this case, there was another accident by one of these helicopters that the defendants owned and that the defendants have refused to allow to be inspected.

The sixth thing I want to address is the Cislo

1 issue. This actually relates to the conflict of interest 09:53AM  
2 motion that was filed, Your Honor. If Mr. McConwell is 09:53AM  
3 calling Mr. Cislo a liar and saying that he did not disclose 09:53AM  
4 their interaction with each other truthfully to the FBI 09:54AM  
5 agent, then again, I want to put Mr. McConwell on notice that 09:54AM  
6 he will be called as a witness to testify under oath about 09:54AM  
7 where that meeting took place, when that meeting took place, 09:54AM  
8 what was said during the course of that meeting, because Mr. 09:54AM  
9 Cislo has confirmed for us that Mr. McConwell specifically 09:54AM  
10 told him that he should not be talking to him, he knew he 09:54AM  
11 shouldn't be talking to him, but he was still talking with him 09:54AM  
12 and Mr. Cislo said he felt intimidated. 09:54AM

13 So to address the last point that Mr. Rogers' 09:54AM  
14 Counsel brought up, the government isn't indicating in any way 09:54AM  
15 shape or form that the defense cannot talk to witnesses or 09:54AM  
16 understand what they're going to say. What we are indicating 09:54AM  
17 is that it is inappropriate and a violation of law to 09:54AM  
18 intimidate witnesses, number one, and number two, to offer to 09:54AM  
19 pay attorney's fees for witnesses because that is unduly 09:54AM  
20 influencing a witness and it goes into tampering with 09:55AM  
21 witnesses and that is what we object to. I have nothing 09:55AM  
22 further to say, Your Honor. Thank you. 09:55AM

23 MR. NICOLAYSEN: Your Honor, I'll be happy to 09:55AM  
24 respond. This is Greg Nicolaysen on behalf of Defendant -- 09:55AM

25 MS. MILLER: No, Your Honor, I'm going to object 09:55AM

1 to Counsel responding. The way these arguments go is, we  
2 filed the motion --

3 THE COURT: That's fine. Ms. Miller, that's all  
4 right. All right. The Court has heard enough. The Court  
5 will take the matters under advisement, will issue its  
6 recommendation and decision as soon as possible.

7 MS. MILLER: Thank you, Your Honor.

8 THE COURT: Thank you everybody.

9 (Proceedings concluded at 9:55 a.m.)

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12 CERTIFICATE OF OFFICIAL REPORTER

13  
14 CITY OF HAGATNA )  
15 TERRITORY OF GUAM ) ss.  
16

17 I, Veronica F. Flores, Official Court Reporter for  
18 the United States District Court of Guam, do hereby certify  
19 the foregoing pages, 1 to 38, to be a true and correct  
20 transcript of the proceedings held in the above-entitled  
21 matter to the best of my ability.

22 Dated this 11th day of May 2020.

23  
24 /s/Veronica F. Flores  
25 Veronica F. Flores